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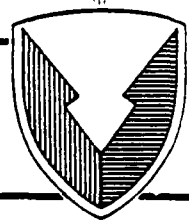


TECHNICAL REPORT CPO-88-1

CRITICALITY OF ARCHIVAL DEMOGRAPHIC  
DATA IN PREPARING FOR EQUAL EMPLOYMENT/  
DISCRIMINATION COURT CHALLENGES

R. Bryan Kennedy, Ed. D.  
Civilian Personnel Office  
U. S. Army Missile Command

OCTOBER 1987



**U.S. ARMY MISSILE COMMAND**

*Redstone Arsenal, Alabama* 35898-5000

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<p>Federal employees are increasingly confronting and challenging what they perceive as discriminatory activity in personnel matters. Statistical analysis of the workforce is required to resolve these issues, and this report points out the critical nature of archival data in that analysis.</p> <p>A summary of the history of equal employment opportunities in the Federal service is presented. A specific case which illustrates the criticality of archival data is cited. The implications of errors in the statistical data are presented and recommendations for corrective actions are given.</p>					
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## I. INTRODUCTION

Civil actions filed in US District Courts against the Department of Defense and other Federal agencies seeking redress for alleged discriminating personnel actions based on race, color, religion, sex, age, or national origin have shown marked increase since the early 1970s. Experts in law, personnel, and industrial psychology expect this trend to continue because of heightened expectations in the overall society and the publication of large settlements. Without question, the Federal Government's extensive educational program in the equal employment opportunity area has contributed to greater employee awareness concerning their employment rights.

There is a growing willingness to confront and challenge what is perceived as prohibited discriminatory activity. This can lead to either a positive or negative situation. It can be positive if it increases work force member perception that advancement in their career is based only upon job related criteria. On the other hand, if individuals seeking relief from perceived prohibited discriminatory practices suffer reprisals, the goal of equal employment opportunity will not be obtained.

The idea of equal employment opportunity in the Federal Government service had its birth with the passage of the Civil Service Act of 1883. With the passage of this act, Congress sought to institute fair employment practices by promoting merit employment through the creation of the Civil Service Commission and providing for the use of open, competitive examinations to measure abilities of applicants for Federal employment. According to Nakano (1978) [1], the Civil Service Act was expanded in 1940 to prohibit Federal employment discrimination based upon race, creed, or color. According to Kennedy (1985) [2], prior to the expansion of the Civil Service Act in 1940, President Franklin D. Roosevelt issued the first of a series of Executive Orders prohibiting racial, ethnic, and religious discrimination in Federal employment.

The press of World War II required that black and other minority groups serve in the Armed Forces and also opened up employment opportunities in the large industrial machine fueled by the war. The opportunity for broader service in the military and private sector not only afforded minorities with the opportunity to develop skills and abilities, but also provided incentives to continue to work for improvement in their social and economic conditions.

Heightened awareness among minorities, as well as reactions from the overall society, caused many accepted practices to be questioned in the late 1950s and early 1960s. In 1961, President Kennedy issued Executive Order 10925 [3], which established the President's Committee on Equal Employment Opportunity designed to provide new emphasis on Equal Employment Opportunity and Affirmative Action. Looking back to the period of the late 1950s and the early 1960s, it is evident that the Kennedy administration was the harbinger in the area of Equal Employment Opportunity and Affirmative Action.

## II. US ARMY MISSILE COMMAND

When the Department of the Army or the Department of Defense is mentioned in casual conversation, people usually get the vision of men and women in uniform. While this is often a correct vision, the Department of Defense is far from being strictly a military organization, and since the early history of the country, has relied on a civilian work force to augment the Department of Defense.

The US Army Missile Command is a 39,000 acre military reservation located on Redstone Arsenal in Madison County, Alabama. This command is responsible for the total life cycle management of all army missile systems. Total life cycle management includes research, development, production management, procurement, quality assurance, maintenance, and logistics support to US troops or to foreign governments that have purchased army missile systems. There are more than 7,000 civilian and approximately 1,000 military personnel assigned to this command.

A work force comprised of both military and civilian employees is unique to the Department of Defense because of its dichotomous administrative and organizational structure. Obvious differences include unions, dress, wages, and benefits. As early as 1775, civilians have worked with and for the military as riflemakers, quartermasters, and physicians. With the requirements of more sophisticated weapon systems, the support and contribution made by long term civilians become even more important.

### III. EQUAL EMPLOYMENT OPPORTUNITY

The concept of equal employment opportunity in the Federal service was around prior to the passage of the Civil Service Act of 1883, but was concept without application. The passage of the Civil Service Act of 1883 was an attempt to institute fair employment practices by promoting merit employment through the creation of the Civil Service Commission and providing the use of open, competitive examinations to measure skills and abilities of all applicants for Federal employment.

Taylor (1975)[4] states that were it not for concern for maximum production from our defense industries during World Wars I and II, equal employment opportunity might not have surfaced as an issue until well into the 1960s. During World War I, President Woodrow Wilson established the position of Director of Negro Economics. This office was to monitor the condition of black wage earners. A comprehensive report was prepared which included information from 46 states. The report was totally ignored. It appeared that while information might be desired, nothing would be done with it once it was developed.

The issue of equal employment for blacks did not get much attention until 1941, when wartime production again became critical. After surveying employment practices, President Roosevelt was alarmed that not only would discriminatory policies be detrimental to the war effort, but were totally inconsistent with our international policy of non-discrimination and freedom for all races. On 25 June 1941, President Roosevelt signed Executive Order 8802 [5], which for the first time in modern history, established non-discrimination as a policy based on law. The order established a Committee on Fair Employment Practice to investigate complaints and to take appropriate steps to redress grievances which it found to be valid. The small size of the staff indicated that only lip service was being paid to non-discrimination policies. The Committee was almost totally ineffective, and on 27 May 1943, it became an independent Federal agency.

In an attempt to continue the Fair Employment Practice Committee, President Truman signed Executive Order 9664 [6] on 20 December 1945, which provided for the continuation of the committee's work into peacetime production. Congress authorized no funds for operation and the committee members were themselves seeking new employment by 3 May 1946. The groundwork had been laid for the non-discrimination issue and on 12 March 1945, New York established the State Fair Employment Practice Commission, which was soon followed by other states. In August 1945, Chicago adopted the first city ordinances covering fair employment practices. These state and municipal laws were designed after the Wartime Commission's charter and indicated that there was beginning to be a general consciousness raising in the area of Equal Employment Opportunity across the country.

On the national level, additional support for black and other minorities came from the Committee on Employment discrimination, an organization primarily oriented toward problems faced by Jews. The committee pointed out the disparate unemployment rates between blacks and whites. As an example, the unemployment rate for whites went from 1.7 percent in July 1945 to 3.9 percent in April 1947, while the black rate went from 2.0 to 6.7 percent. In, Detroit,

for example, 70 percent of available semi-skilled and unskilled openings carried blatantly discriminatory specifications. A survey of job announcements in Ohio showed that out of 61,000 requests for laborers, 14,500 specified "white only". Jobs available to blacks consisted primarily of janitorial, maintenance, and grounds keeping. The Committee on Employment Discrimination attempted to get a bill passed which would have re-established the Fair Employment Practice Committee and established non-discrimination policies similar to those in effect during World War II. The bill, as written, would have covered all employers with 50 or more employees. Municipal and state agencies, nonprofit religious, charitable, fraternal, social, and educational associations would have been exempted. The bill was supported by President Truman, but did not receive necessary support in Congress. With the defeat of this bill, fair employment practices received very little national attention until the early 1960s. Information in this paragraph was gleaned from Taylor's study [4].

While the Government was not included in the Civil Rights Act of 1964, the statute did state that the US policy was to ensure nondiscrimination in Federal employment based on race, color, religion, sex, or national origin. Executive Order 11246 [7], issued by President Lyndon B. Johnson transferred Federal equal employment enforcement to the Civil Service Commission and established the policy of the Government to:

"Provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin and to promote the full realization of equal opportunity through a positive continuing program in each executive department and agency" (p.1).

Executive Order 11375 [8], prohibited discrimination on the basis of sex. On August 1969, President Nixon issued Executive Order 11478 [9], which stated that "equal employment opportunity must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government" (p.1). Executive Order 11478 set forth a new direction for the Equal Employment Opportunity program and emphasized that each Federal agency was responsible for developing an affirmative action program.

According to the Comptroller General's Report [10], the order stated that the Government policy was to:

- a. Provide equal opportunity in Federal employment for all persons.
- b. Prohibit discrimination in employment because of race, color, religion, sex, or national origin; and
- c. Promote full equal employment opportunity through a continuing affirmative action program of each executive department and agency.

This equal opportunity was to apply to, and be an integral part of, every aspect of personnel policy and practice in the employment, development, advancement, and the treatment of civilian employees of the Government.



Under Executive Order 11478 [9], the Civil Service Commission was directed to:

- a. Review and evaluate program operations.
- b. Obtain necessary data and report to the President on overall progress.
- c. Issue appropriate regulations, orders, and instructions with which agencies must comply.
- d. Provide prompt, fair, and impartial consideration of all complaints involving Federal employment discrimination.
- e. Provide counseling for employees who believe they have been discriminated against and encourage informal resolution of these matters.
- f. Provide for appeals of decisions to the Civil Service Commission following impartial review by the Federal agency involved.

The Equal Employment Opportunity Act of 1972 [11] was the legal basis for assuring equal employment opportunities for females and minorities. The Civil Service Commission was assigned responsibility for leadership and enforcement. Under terms of this act, each Federal agency was directed to establish an Equal Employment Opportunity program as a part of the personnel policy. A major thrust of the act was to provide affirmative action for increasing representation of minorities and females in the Federal work force. Agencies were required to continuously report progress made toward Equal Employment Opportunity actions.

Additionally, the Civil Service Commission was required to:

- a. Annually approve national and regional Equal Employment Opportunity plans (commonly referred to as affirmative action plans) submitted to each agency.
- b. Review and evaluate the operation of agencies' Equal Employment Opportunity programs.
- c. Publish periodic reports reflecting the Government's progress in providing Equal Employment Opportunity.

The Civil Service Reform Act enacted on October 13, 1978 [12], stated that in order to have a competent, honest, and productive work force, personnel management should be implemented consistently with the merit system principles.

One of the primary principles, as defined by the act, was that: "Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and

advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition, which assures all receive equal opportunity" (Public Law 95-454 Civil Service Reform Act, 1978).

Public policy, as defined by Congress in the above paragraph, by passage of the Civil Service Reform Act, is to recruit and attract a Federal work force that mirrors the larger society as to race, sex, and ethnic group. Each Federal agency is required to analyze their work force regarding composition of females and minorities and, accordingly, design an affirmative action program that will allow the agency an opportunity to achieve a work force that mirrors the civilian labor force of the recruitment area.

#### IV. UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

In an attempt to establish a uniform Federal position on prohibiting discrimination in employment practices on the basis of race, color, religion, sex, or national origin, the Uniform Guidelines on Employee Selection Procedures were developed by the Equal Employment Opportunity Commission. They are also designed to assist employers and other users to comply with Federal Equal Employment Opportunity laws and to provide a framework for determining the proper use of tests and other selection procedures.

According to the Comptroller General's report, July 30, 1982 [13], the technical provisions of the Uniform Guidelines describe how to demonstrate that tests or other selection procedures are related to jobs for which they are used. It is intended that these provisions be consistent with professionally accepted methods of the psychological profession for demonstrating the relationship of a test to performance. Policy provisions describe the responsibilities of employers for detecting the adverse impact of a selection procedure and the option a user has if impact is found. Adverse impact is usually indicated when one race, sex, or ethnic group's selection rate is less than 80 percent of the rate for the group with the highest selection rate.

The guidelines require that those persons and organizations covered by their provisions collect data on the effects of their selection procedures by sex and various racial and ethnic groups. The data is used to determine whether the procedures have had an adverse impact on the employment opportunities of any of these groups.

The guidelines have their origin in the Civil Rights Act of 1964. In title VII of the act, Congress attempted to strike a balance between eliminating discriminatory employment practices in the private sector and allowing the use of preemployment tests to select qualified employees.

According to the Comptroller General's Report [13], the Congress specifically authorized the use of any professionally developed test provided that such test, and its administration or action upon the results, is not designed, intended, or used to discriminate. The Equal Employment Opportunity Commission, established by title VII, was to carry out this and other provisions of the law.

The period of the late 1960s and early 1970s saw the Equal Employment Opportunity Commission, the Department of Labor, and the Civil Service Commission, under separate legal authorities, develop and issue guidelines on the proper use of tests and other selection procedures. Critics often charged that these guidelines were inconsistent and represented the inefficient use of government and employer resources. It was charged that enforcing such inconsistent standards was unfair policy.

The 1972, title VII was amended to expand the coverage of the act to public employers and establish the Equal Employment Opportunity Coordinating Council. The council was composed of the Secretary of Labor, the Chairman of EEOC, the Attorney General, the Chairman of the Commission on Civil Rights, and the Chairman of the Civil Service Commission, or their respective designees. The council's purpose was to develop and implement agreements, policies,

and practices which would promote efficiency and eliminate conflict, competition, duplication, and inconsistency among the various departments, and branches of government.

In its June 29, 1973 report to President Nixon, the council emphasized the development of a uniform set of guidelines on employee selection procedures as its primary project for the year. In 1976, the Civil Service Commission and the Departments of Labor and Justice issued common guidelines, but EEOC did not accept their guidelines and republished its 1970 guidelines. The presence of two different sets of guidelines brought the re-opening of negotiations in 1977.

Reorganization Plan No. 1 of 1978 dissolved the council before it was able to issue uniform guidelines. Executive Order 12067 [14], transferred all council functions to the Equal Employment Opportunity Commission and placed responsibility for providing leadership and coordination of all Federal equal employment opportunity enforcement efforts to that agency. Within two months, the uniform guidelines on Employee Selection Procedures were completed and were subsequently adopted by the Equal Employment Opportunity Commission, the Office of Personnel Management, the Departments of Justice and Labor, and the Department of the Treasury's Office of Revenue Sharing.

The guidelines require users to collect, maintain, and analyze race, sex, and ethnic group selection data on virtually all applicants for all employment decisions for all jobs. The definition of applicant can vary according to a user's recruitment and selection procedure. The general definition of applicant is a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. Suggestions have been made to define an applicant as a person who has completed and filed a formal written application for a specific job for which an employer is accepting applications and for which the person is minimally qualified for the job.

The guidelines also require users to maintain, and have available for inspection, records showing whether their tests adversely affect the employment opportunities of any group covered by the guidelines. Adverse impact determinations should be made annually for groups constituting at least 2 percent of the labor force in the relevant labor area or 2 percent of the work force. The guidelines do not indicate how long such records should be maintained if no adverse impact is discovered.

## V. DISCRIMINATION CHARGE

On June 13, 1985, three plaintiffs filed a complaint in the US District Court of Northern Alabama, alleging race discrimination against the US Army Missile Command. This suit came about after unsuccessful attempts to prove discrimination through administrative procedures based on their failure to be selected for the position of Contract Specialist/Procurement Analyst/Contract Price Analyst, GS-1102-5 potential 9, under internal merit promotion procedures. (The position will hereinafter be referred to as "contract specialist"). The contract specialist position would have represented a promotion for each of the plaintiffs.

Prior to the filing of the complaint in Federal court, an administrative complaint was filed with the Equal Employment Opportunity Officer at the US Army Missile Command. The administrative complaint was processed in accordance with 29 CFR Part 1613 and a hearing was conducted by the US Army Civilian Appellate Review Agency. The hearing resulted in a finding that there was no discrimination against any of the plaintiffs under the internal merit promotion procedures.

For the period of time under contention by the plaintiffs (October 1, 1982 - September 1, 1985) there were three methods that were utilized to fill Contract Specialist, GS-1102-5 potential 9, positions. During this timeframe, there were 92 Contract Specialist, GS-5 potential 9, positions filled. The three methods are as follows:

a. Internal Promotions. Merit promotion announcements are issued to the work force and employees who want to be considered can apply against the announcements. During the period of contention, there were three separate merit promotion announcements. The three announcements were identified as RAMPS Announcement 352-82, RAMPS Announcement 84-007, and RAMPS Announcement 84-001. All applicant's submissions are reviewed by a personnel staffing specialist to determine basic experience and/or educational requirements. Applicants who fail to meet the basic qualification requirements are notified in writing. Applications that meet the basic requirements are referred to a panel of subject matter experts for further review. The panel of subject matter experts examine each candidate's experience and total background and compare the respective backgrounds against the knowledges, skills, and abilities that are required in the position that is being announced through the Merit Promotion Program. Candidates that meet or exceed pre-determined levels predescribed by the crediting plan of the position to be filled are certified by the panel of subject matter experts as best qualified. All best qualified applicants are submitted to selecting supervisors who have a position to be filled. Supervisors may select any of the candidates from among the best qualified list. The best qualified list is maintained for a period of six months and a new announcement is then made. Candidates who do not make the best qualified list are notified in writing. Candidates who are rated as not qualified because they lack time in grade or specialized experience, and who will gain the qualifying experience or time in grade prior to the time the merit promotion list expires (six months) will be added to the list as they become eligible.

b. Schedule B. In addition to selecting from merit promotion lists, the supervisor may consider and select candidates from outside the Federal service through the Schedule B appointment authority. Schedule B candidates are applicants from outside the Federal service who possess superior academic qualifications for the position that is being filled.

c. Cooperative Education Program - Supervisors may utilize this method to fill Contract Specialist, GS-1102-5 potential 9, positions. Candidates from this authority are people who have worked an internship at the Missile Command while attending college and are eligible for conversion to Federal service. The Missile Command has an implied contract to employ students who have completed the internship.

## VI. STATISTICAL SELECTION INFORMATION

The plaintiffs who were all employees of the US Army Missile Command were referred for consideration under Merit Promotion Announcement Number RA 84-001. Because of non-selection for the position of Contract Specialist, GS-1102-5 potential 9, each person who later became plaintiffs in the court case, exhausted all of their options for relief through the formal administrative procedures that are available within the Department of the Army. At no point in the administrative process was a finding of discrimination made. As a result of dissatisfaction with the decision rendered, three of the complainants employed a lawyer and proceeded into Federal court.

A close review of the archival selection data was conducted of Merit Promotion Announcement Number RA 84-001. The archival data was retrieved from the Missile Command automated data file and is depicted in Table 1.

TABLE 1. Comparison of Selection Rates of Black Candidates Against the Selection Rate of White Candidates for Merit Promotion Announcement Number RA-84-001

369 Best Qualified Candidates			
	<u>No. Within Reach for Selection</u>	<u>No. Selected</u>	<u>Selection Rate Percent Selected</u>
White	321	28	8.7
Black	48	3	6.3

Calculation of Adverse Impact  $\frac{6.3}{8.7} = 72\%$

As outlined in Table 1 above, the selection rate for blacks was 72 percent of the rate for the largest selection group (whites, in this case). The lower selection rate for blacks indicates adverse impact for this particular merit promotion announcement. It is not known what effect this selection rate had on the attorney employed by the plaintiffs in the decision to pursue the case in Federal court. The statistical data for one announcement represents only a portion of the actual selections for the period challenged in court (October 1, 1982 - September 1, 1985).

<sup>1</sup> Information compiled from US Army Missile Command Automated Historical Data File.

After the case was entered in court and data was being compiled and analyzed in order to answer the numerous interrogations that were submitted by attorneys of the plaintiffs, the team of personnel staffing specialists in charge of the case began to have serious questions about the validity of the automated data base. As a result of these suspicions and the desire to present the most reliable defense possible, a decision was made to re-check the race of each person referred and selected against Merit Promotion Announcement RA 84-001. A re-check, with the supervisors and the various administrative officers, resulted in the data depicted in Table 2 below:

TABLE 2. Comparison of the Selection Rate of Black Candidates Against the Selection Rate of White Candidates for Merit Promotion Announcement Number RA 84-001.<sup>1</sup>

375 Best Qualified Candidates

	<u>No. Within Reach for Selection</u>	<u>No. Selected</u>	<u>Selection Rate Percent Selected</u>
White	329	28	8.5
Black	44	3	6.8

$$\text{Calculation of Adverse Impact } \frac{6.8}{8.5} = 80\%$$

A comparison of the figures in Table 1 and Table 2 shows that with an intensive re-identification effort on the part of management, that adverse impact is avoided. The increase of best qualified candidates from 369 to 375 represents the addition of six best qualified because of the provision that candidates will be added to the best qualified list throughout the six month life of the register. The rise in the number of white applicants to be considered increased from the addition of the extra six names, plus the identification of some employees as white who had erroneously been identified as black. This shift caused the white selection rate to drop from 8.7 to 8.5 percent. The drop in the number of black to be considered from 48 to 44 from the intensive re-identification caused the black selection rate to increase from 6.3 to 6.8 percent. The calculation of adverse impact using the lower white selection rate and the higher black selection rate resulted in the Missile Command being in a position of no adverse impact on Merit Promotion Announcement Number RA 84-001.

<sup>1</sup> Information compiled from Army Missile Command Automated Historical Data File, plus verification from direct observation.



## VII. IMPLICATIONS

The implications of this study have impact in more than one area. First of all, the shifting of just a few candidates in category "number within reach for selection", without a shift in the number actually selected, can drastically alter the selection results.

There are strong indications that agencies should not rely solely on archival data in preparation for charges filed concerning matters of equal employment opportunity in the administrative system. There are even more reasons not to rely solely on archival data in the face of court challenges. Ramifications of the effects of a consent decree, or even costly individual settlements, make it imperative that a visual re-check be performed.

The third implication is that personnel be fully trained, in depth, in the area of adverse impact. This training should address how drastic changes can be brought about by the shift in the number available for selection, as well as, the number actually selected. Employees who make the initial identification of race, sex, or then enters information in the arena of equal employment opportunity, should be continually briefed concerning the importance of their work.

## VIII. RECOMMENDATIONS

In-depth training in the area of adverse impact and other requirements of the Uniform Guidelines on Selection Procedures should be required of all people that are in a position to ensure compliance and to protect the rights of all employees. Installations should perform spot checks of their procedure for identifying sensitive data in the area of equal employment to ensure that it is accurate and up to date. Bradley and Kennedy (1987)[15] identify a need for counselors assisting various subgroups to exert their influence, both individually and collectively through their professional associations, to ensure that effective recruitment programs are designed to provide employment opportunities for groups that have problems finding employment. The US Army Missile Command and the Department of the Army have been leaders in providing employment opportunities for blacks. Concerted efforts should be made to ensure that the black community is aware of these efforts.

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